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June 13, 2019

Sent by e-mail sframe@king5.com and Regular Mail

Susannah Frame
KING 5 Television
1501 1st Ave. South
Suite 300
Seattle, WA 98134

Re: Veterans Independent Enterprises of Washington, Inc. (VIEW)

Dear Ms. Frame:

This correspondence addresses the issue regarding the employee wage claims that are presently in litigation in Pierce County against VIEW. There are essentially three claims that are defined by the classes of employees certified in the action as follows:

The Plaintiff has certified three separate classes as described below with a brief summary of the responses to the claims set forth under each class:

1. "Class 1" - All individuals, other than current officers or directors of Veterans Independent Enterprises of Washington ("VIEW"), that are or were employed by Defendants and received at least one paycheck at any time between February 1, 2018 and the present day? ("Paid Employees")

Response: This relates to the Plaintiff's allegations that the payment of wages after the established paydays triggers an employer liability for double damages pursuant to RCW 49. Washington Courts have rejected a strict time line and recognizes employers have some latitude to deal with bookkeeping issues.

Taking all of this information together, it is apparent that when enacting and interpreting WAC 296-128-035, the agency has always intended

employers to have some lag time in paying their employees. However, the lag time is limited to seven days in the case of employers who pay their employees only once per month. Because the City pays its employees twice per month, that rule does not apply to this case.

The employees argue that if the seven-day processing period does not apply to twice per month pay periods, then no processing time is allowed. As we have already stated, that is an absurd interpretation and we reject it.”

Clark v. City of Kent, 136 Wash. App. 668, 674–77, 150 P.3d 161, 164–65 (2007).

At this time, we have not reviewed all of the pay periods for all employees to determine which pay period pay checks were issued after the regular pay days, if any. We are unaware of any instance where employees were not paid for wages for which the employer agreed to compensate them. The only cases I am aware that triggered double damages for late pay checks involved cases where there were delays of several months.

It would be a draconian measure to impose double damages for pay checks that were delivered a day or two late and would have the potential for a serious impact upon Washington employers.

2. “Subclass 1A”, a subclass of Class 1, - All individuals, other than current officers and/or directors of VIEW, that were suffered or permitted to work as volunteers after being laid off between February 1, 2018 and present day? (“Volunteer Workers”).

Response: This allegation involves a period when VIEW laid off a number of employees from late February 2018 through March 2018. Many employees volunteered to work during this time period with the understanding that they would not be paid for their services. All or most of the employees who agreed to volunteer worked in jobs that were not their normally assigned duties.

The wage statutes and regulations at issue define employees covered under the statute in a way that excludes volunteers.

(2) “Employee” means an employee who is employed in the business of his employer whether by way of manual labor or otherwise. “Employee”

does not include:

- (a) Any individual registered as a volunteer with a state or federal volunteer program or any person who performs any assigned or authorized duties for an educational, religious, governmental or nonprofit charitable corporation by choice and receives no payment other than reimbursement for actual expenses necessarily incurred in order to perform such volunteer services;
- (b) Any individual employed in a bona fide executive, administrative or professional capacity or in the capacity of outside salesperson;
- (c) Independent contractors where said individuals control the manner of doing the work and the means by which the result is to be accomplished.

Wash. Admin. Code 296-126-002

(3) "Employee" includes any individual employed by an employer but shall not include:

- (d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

RCW 49.46.010(3)(d)

There is a bona fide dispute as to whether the wages are due for the volunteer periods. Each employee who agreed to volunteer signed a sheet indicating that they were volunteering. Each employee's volunteer hours were tracked and recorded. The Washington wage regulations on restrictions upon permitting employees of an entity to volunteer are not well defined. A public records request has been submitted to the Department of Labor and Industries (L & I) requesting copies of their advice to employers on the issue of volunteer activities, but has not yet been responded to by L & I.

3. "Class 2" - All individuals, other than current officers and/or directors of VIEW, that are or were employed by Defendants and had amounts deducted from their

wages related to program fees, housing fees, or rent between June 15, 2015 and present day be certified. ("Renters")

Response: VIEW provides housing to veterans in transition from homelessness, incarceration and other adverse life events at extremely reduced rental rates, in addition to employment opportunities. When veterans using VIEW housing become employees they sign an agreement authorizing deductions from wages for rent. See **Exhibit 1**. For the named Plaintiff, Matthew Granstrom. The deductions were clearly reflected on the employees' paystubs.

The Plaintiff asserts that this was an improper deduction.

The regulations allow an employer to make deductions from wages upon the agreement of the employee:

(2) During an on-going employment relationship, an employer may deduct wages when the employee expressly authorizes the deduction in writing and in advance for a lawful purpose for the benefit of the employee. These deductions may reduce the employee's gross wages below the state minimum wage.

Example 1. Employee purchase of employer's goods or services: An employee works for a tire store and wants to buy tires from the store. The employee can enter into a written agreement in advance with the employer to buy the tires through a payroll deduction. However, the employer must sell the tires to the employee for the same price or less than it would sell the tires to the customer.

Example 2. Employee loan: An employee worked for a hardware store and asked the employer for a loan. The employer loaned the employee money and charged reasonable interest. An agreement with the terms of repaying the loan and interest through payroll deductions was made in writing and in advance between the employer and employee.

Example 3. Employee benefits: Deductions have been specifically agreed upon orally or in writing in advance by the employee and employer for monthly pension, medical, dental, or other benefit plans.

Example 4. Creditor or third party: An agreement with a creditor or third party to withhold \$400 from the final paycheck for an automobile loan to be paid directly to the employee's financial institution by the employer. The creditor or third party can be the employer of the employee.

(3) Neither the employer nor any person acting in the interest of the employer can derive any financial profit or benefit from any of the deductions under this regulation.

(4) For the purposes of this regulation, reasonable interest charged by the employer for a loan or credit extended to the employee is not considered to be of financial benefit to the employer. Note: Employers are advised to check with the United States Department of Labor, Wage and Hour Division and the Internal Revenue Service regarding application of federal laws on charging interest.

(5) The employer must identify and record all wage deductions openly and clearly in employee payroll records.

Helpful information:

The following are examples of situations when deductions are not allowed from the employee's wages during an on-going employment relationship:

Example 1. Customer's bad check or credit card: The amount of a customer's check that is returned for nonsufficient funds when an employee accepts a check in violation of established policies, or if an employee accepts a customer's bad credit card in violation of established policies.

Example 2. Shortage from cash register: The amount of a till shortage even when an employee participates in cash accounting at the beginning and end of their shift, has sole access to the cash register, and is short at the end of the shift.

Example 3. Customer walks out without paying: An unpaid bill when a customer leaves the restaurant without paying even when an employee is not watching their customers at a restaurant and ignores the fact the customers are finished dining and are ready for their check.

Example 4. Damage or loss: The cost for replacing broken glasses when the employee drops a tray of glasses when unloading the dishwasher.

WAC 296-126-028

The employees assert that the provisions of section 3: (Neither the employer nor any person acting in the interest of the employer can derive any financial profit or benefit from any of the deductions under this regulation.) prohibit VIEW from deducting for rent because that is a benefit to VIEW. However, there can be no distinction between deducting for rent and a tire store owner deducting for tires bought by an employee. L & I agreed that these deductions may be taken from employee wages by VIEW if the employee agree to deductions in advance. See **Exhibit 2**.

VIEW provides valuable work experience and transitional housing for veterans. I urge you to be fair in your reporting of these issues. Many of the issues outlined in your e-mail correspondence are demonstrably false and you declined to provide the necessary information for a specific response. Portraying VIEW in a false light could threaten the

existence of this valuable organization.

Ms. Hibbler will be contacting you directly to address the allegations that have been made specifically against her. I have requested that she not respond to any of the allegations of the wage lawsuit.

Please feel free to contact me if you have any questions.

Sincerely,

KRAM & WOOSTER, P.S.



Richard H. Wooster

RHW:cd
Enclosures:
Cc. clients

EXHIBIT 1



A non-profit organization
assisting veterans

Veterans Independent Enterprises of Washington
4630 16th Street East, Suite B-10
Fife, Washington 98424
Tel: 253 922 5802 Fax: 253.922 0240
www.veteransworkshop.org

AUTHORIZATION FOR VOLUNTARY PAYROLL DEDUCTION

I, Matthew Greenstrom hereby authorize Veterans Independent Enterprises of Washington to deduct from my wages for:

1. Operation Expenses to participate in sheltered housing. Sum of \$ 400.00 5 months
Beginning Sept 26, 2017 and ending upon exiting the program and /or sheltered housing. 200.00

I am authorizing this voluntary deduction as specified in the rules and regulation of the V.I.E.W. per pay

In the event my employment ends for any reason before the final deduction is made, the entire balance Check
may X or may not _____ be deducted from my final wages.

Matthew Greenstrom

Employee's Signature

9-6-17

Date signed

Zoea Gomez

Housing Case Manager

9/6/17

Date signed

EXHIBIT 2

From: Arnold, Crystal K (LNI) [<mailto:arnc235@LNI.WA.GOV>]

Sent: Friday, September 8, 2017 2:27 PM

To: Rosemary Hibbler <rhibbler@veteransworkshop.org>; Gary A Peterson

<GaryAPeterson@veteransworkshop.org>; Don Hutt <dhutt@veteransworkshop.org>; Tammy Taylor

<TTaylor@veteransworkshop.org>

Subject: Wage complaint #115470

Good afternoon.

Thank you for your response to the wage complaint filed by Mr. Robert Peters.

Please understand that throughout the course of an investigation the nature of a complaint has the possibility of developing into something other than that originally claimed on a Workers Rights Complaint form. We conduct investigations to gather documentation proving compliance to the Washington State Wage Payment Act of 2006. When other issues are discovered or brought to the attention of the investigating agent, the nature of the complaint may shift to include these changes or additions. Which is what happened with Mr. Peters case.

In your letter dated 9/8/2017, you point out WAC 296-126-028. I agree this WAC is applicable. However, please review sub section 2. As I have previously explained this WAC in sub section 2 clearly states that the deduction needs to be ***expressed in writing and in advance***. Throughout the course of this investigation, I have made numerous requests via phone, letter, email and in person for written authorization showing that the claimant, Mr. Robert Peters, authorized such payroll deductions to be taken from his wages. I have yet to receive a document showing Mr. Peters' authorization.

Please know that a citation has not yet been issued. However, knowing that you want to exercise your appeal rights, I will prepare the Notice of Assessment (NOA) against the Veterans Independent Enterprises of Washington along with a citation including a \$1000.00 penalty and interest on the wages owed. I will then close the complaint at my level and send it to our citations desk. There the official NOA and citation will be prepare and you will be notified of your appeal rights.

Feel free to contact me with any questions or concerns.

Thank you.

Have a blessed day!

Crystal Arnold

Labor & Industries

Industrial Relations Agent

Employment Standards

253-596-3936

Arnc235@lni.wa.gov

Keep Washington Safe and Working